

Remark

Applicant respectfully requests reconsideration of this application as amended.

Claims 1-4, 6-11, 14, 16, 17, and 20 have been amended. Claims 18 and 19 have been canceled. Claims 22-28 are new. Therefore, claims 1-17 and 20-28 are now presented for examination.

Claim Objections

Claims 16-17 and 20-21 are objected to for various informalities. These have been corrected in the amendments above.

35 U.S.C. §102 Rejection

Soong et al.

The Examiner has rejected claims 1-17 and 20-21 under 35 U.S.C. §102 (e) as being anticipated by Soong et al., U.S. Patent No. 6,687,238 ("Soong"). Soong suggests measuring the out-of-band (OOB) power and then either adjusting the shape of a multiple user CDMA waveform, or reducing the number of users for the CDMA waveform. There is no suggestion that any communications occur specifically in the OOB area. Soong shows only (e.g. in Figure 1) that transmit in-band power will overflow into this area. Figures 10 and 15 show the OOB power being reduced by adjusting the shape of the CDMA waveform.

The present invention, however, recites "assigning a band-edge channel to carry communications between" first and second communication devices. The band-edge channel is "a communication channel within the guard band." First of all, while Soong discusses OOB power, there is no explicit mention of guard bands. Second, there is no

Docket No.: 015685P113

PAGE 12/15 * RCVD AT 5/3/2006 5:30:11 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/1 * DNIS:2738300 * CSID:303 740 6962 * DURATION (mm:ss):04:30

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suggestion of assigning channels within the guard band. All communications in Soong are confined to the in-band area.

35 U.S.C. §102 Rejection

Nakano

The Examiner has rejected claims 1-17 and 20-21 under 35 U.S.C. §102 (e) as being anticipated by Nakano et al., U.S. Patent No. 6,687,238 ("Nakano"). Nakano shows a guard band in the prior art of Figure 3. However, as shown in Figure 9, Nakano proposes to eliminate the guard band. Figure 9 shows an area on the right designated as the frequency band of base station 412 and mobile station 414, and an adjacent area as the frequency band of another, nearby base station 422. There is no guard band between them. The cross-hatched area is designated as the power output of a mobile station 414 and the diagram shows that there is OOB power from the mobile 414 that spills into the frequency band of the nearby base station 422. Figure 8 shows the mobile 414 transmitting to the base station 412 but also interfering with the nearby base station 422. Nakano teaches simply that when the Figure 8 scenario occurs, then the mobile station is "halted."

Nakano differs from the invention described in Claim 1 because there is no suggestion of assigning channels or communicating using channels that are in the guard band. In Nakano, when interference is high, the mobile (communicating in the standard band) is halted. In Claim 1, when performance is good the mobile (or the base station) is assigned a channel in the guard band. This is clearly a different approach.

While only Claim 1 has been discussed, the other claims are believed to be allowable on similar grounds as well as for the specific recitations set forth in each claim.

Docket No.: 015685P113

Application No.: 10/1026 770

PAGE 13/15 * RCVD AT 5/3/2006 5:30:11 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/1 * DNI:2738300 * CSID:303 740 6962 * DURATION (mm:ss):04:30

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respectively. Accordingly, all of the claims are believed to be allowable over the references.

Conclusion

Applicant respectfully submits that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the claims as amended be allowed.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Request for an Extension of Time

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Charge our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: May 3, 2006


Gordon R. Lindeen III
Reg. No. 33192

12400 Wilshire Boulevard
7th Floor
Los Angeles, California 90025-1030
(303) 740-1980

Docket No.: 015685P113

PAGE 15/15 * RCVD AT 5/3/2006 5:30:11 PM [Eastern Daylight Time] * SVR:USPTO-EXRF-3/1 * DNIS:2738300 * CSID:303 740 6962 * DURATION (mm:ss):04:30

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